

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN E. HERRINGER,

Defendant.

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CASE NO. 8:05CR123

ORDER

This matter is before the Court pursuant to the events that occurred during the scheduled change of plea hearing and on the government's oral motion to continue the trial in this matter.

This case was scheduled for trial on July 19, 2005. The Court was advised that the Defendant wished to plead guilty but that defense counsel was not in agreement with the Defendant's decision. Accordingly, government counsel signed the certificate in the plea petition and plea agreement. Defense counsel, however, signed the following statement written on the page of the certificate: "I do not believe [Defendant] is making the right decision and [Defendant] wishes to plead guilty against my advice." (Filing No. 30.) The Defendant signed the plea petition. The plea agreement was signed by government counsel and the Defendant. Defense counsel did not sign on his signature line, but rather signed the following statement: "I do not believe this plea agreement is in the defendant's best interest based upon my investigation of the facts in this case." (Filing No. 31.) The Court scheduled a change of plea hearing on July 20, 2005, and the plea petition and plea agreement were filed.

On July 25, 2005, at the change of plea hearing the Defendant stated that after speaking with his attorney prior to the hearing, he did not wish to proceed with the change of plea hearing and wished to proceed to trial. The Court scheduled trial in this matter for the first available date, July 26, 2005. The government orally moved to continue trial, as he will be on vacation the weeks of July 25, 2005, and August 1, 2005. The Defendant, after consulting with his attorney, declined to waive his right to a speedy trial.¹

The Court will continue the trial in this matter and waive speedy trial as indicated below.

IT IS ORDERED:

1. The government's oral motion to continue the trial in this matter is granted;
2. The trial in this matter, previously scheduled for July 19, 2005, and then July 26, 2005, is rescheduled to August 23, 2005, or as soon thereafter as the case may be called;
3. The ends of justice have been served by granting the motion and outweigh the interests of the public and the Defendant in a speedy trial. The additional time arising as a result of the granting of the motion, i.e., the time between July 20, 2005, and the time of trial, shall be deemed excludable time in any computation of time under the requirement of the Speedy Trial Act for the following reasons: in light of the information that the Defendant wished to

¹The Court notes that on July 6, 2005, the Defendant filed a motion to continue the trial indefinitely, accompanied by a waiver of speedy trial that had been filed on July 1, 2005. (Filing Nos. 26, 27.) The reason given for the continuance was that the Defendant wished to hire counsel, Glenn Shapiro. The Magistrate Judge denied the motion for the reasons that Mr. Shapiro had not entered an appearance and the trial cannot be continued indefinitely based on the possibility of Mr. Shapiro entering his appearance. (Filing No. 28.)

plead guilty, this case was removed from the trial calendar and scheduled for a change of plea that did not take place; the Court is in trial during this week of July 19, 2005 in another matter; government counsel's schedule and the undersigned's schedule cannot accommodate the trial in this matter until the week of August 22, 2005; and the case must be continued to allow for continuity of government counsel. The failure to grant additional time could result in a miscarriage of justice. 18 U.S.C. § 3161(h)(8)(A) & (h)(8)(B)(iv); and

4. The Clerk is directed to strike the plea petition (Filing No. 30) and the plea agreement (Filing No. 31).

DATED this 22nd day of July, 2005.

BY THE COURT:

s/Laurie Smith Camp
United States District Judge